

PATENT COOPERATION TREATY

From the
INTERNATIONAL SEARCHING AUTHORITY

REC'D 21 NOV 2005

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To:
YORAM ZER
APPELLEFELD ZER LAW OFFICE
29 LILINBLUM
TEL AVIV, ISRAEL 65133

**WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY**

(PCT Rule 43bis.1)

		Date of mailing (day/month/year)	16 NOV 2005
Applicant's or agent's file reference B-0043-0000		FOR FURTHER ACTION See paragraph 2 below	
International application No. PCT/IL04/00822	International filing date (day/month/year) 09 September 2004 (09.09.2004)	Priority date (day/month/year) 16 September 2003 (16.09.2003)	
International Patent Classification (IPC) or both national classification and IPC IPC(7): B29C 33/40; A43B 13/38 and US Cl.: 264/219, 222, 223; 36/43			
Applicant BARAK, YEHOSHUA			

1. This opinion contains indications relating to the following items:

<input checked="" type="checkbox"/>	Box No. I	Basis of the opinion
<input type="checkbox"/>	Box No. II	Priority
<input type="checkbox"/>	Box No. III	Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
<input type="checkbox"/>	Box No. IV	Lack of unity of invention
<input checked="" type="checkbox"/>	Box No. V	Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability, citations and explanations supporting such statement
<input type="checkbox"/>	Box No. VI	Certain documents cited
<input checked="" type="checkbox"/>	Box No. VII	Certain defects in the international application
<input checked="" type="checkbox"/>	Box No. VIII	Certain observations on the international application

2. FURTHER ACTION

If a demand for international preliminary examination is made, this opinion will be considered to be a written opinion of the International Preliminary Examining Authority ("IPEA") except that this does not apply where the applicant chooses an Authority other than this one to be the IPEA and the chosen IPEA has notified the International Bureau under Rule 66.1bis(b) that written opinions of this International Searching Authority will not be so considered.

If this opinion is, as provided above, considered to be a written opinion of the IPEA, the applicant is invited to submit to the IPEA a written reply together, where appropriate, with amendments, before the expiration of 3 months from the date of mailing of Form PCT/ISA/220 or before the expiration of 22 months from the priority date, whichever expires later.

For further options, see Form PCT/ISA/220.

3. For further details, see notes to Form PCT/ISA/220.

Name and mailing address of the ISA/ US Mail Stop PCT, Attn: ISA/US Commissioner for Patents P.O. Box 1450 Alexandria, Virginia 22313-1450 Facsimile No. (703) 305-3230	Date of completion of this opinion 30 October 2005 (30.10.2005)	Authorized officer DEBORAH A. THOMAS Michael Colaiann DEBORAH A. THOMAS Telephone No. 571-272-1100 <i>Dat</i>
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WRITTEN OPINION OF THE
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Box No. I Basis of this opinion

1. With regard to the language, this opinion has been established on the basis of:

the international application in the language in which it was filed
 a translation of the international application into _____, which is the language of a translation furnished for the purposes of international search (Rules 12.3(a) and 23.1(b)).

2. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application and necessary to the claimed invention, this opinion has been established on the basis of:

a. type of material

a sequence listing
 table(s) related to the sequence listing

b. format of material

on paper
 in electronic form

c. time of filing/furnishing

contained in the international application as filed.
 filed together with the international application in electronic form.
 furnished subsequently to this Authority for the purposes of search.

3. In addition, in the case that more than one version or copy of a sequence listing and/or table(s) relating thereto has been filed or furnished, the required statements that the information in the subsequent or additional copies is identical to that in the application as filed or does not go beyond the application as filed, as appropriate, were furnished.

4. Additional comments:

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Box No. V Reasoned statement under Rule 43 bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)	Claims <u>NONE</u>	YES
	Claims <u>1-8</u>	NO
Inventive step (IS)	Claims <u>NONE</u>	YES
	Claims <u>1-8</u>	NO
Industrial applicability (IA)	Claims <u>1-8</u>	YES
	Claims <u>NONE</u>	NO

2. Citations and explanations:

Claims 1-8 lack novelty under PCT Article 33(2) as being anticipated by Schenkl (PS Patent No. 4,702,255).

With respect to Claim 1 and 5, Schenkl teaches that an insole is made from a representation made from a plaster impression of a human foot and that the insole made from the representation covers the heel, forefoot, and metatarsal region (see Abstract and col. 4, lines 20-34 and 51-65). As the insole includes the metatarsal covering area, this portion is analogous to the insert claimed by Applicant. The ability of the insole to create enough space for the foot to complete a step with significantly reduced bending of the foot area of the five metatarsal heads of the forefoot is inherent in Schenkl principally because Schenkl teaches the same process.

With respect to Claim 2 and 6, Schenkl teaches making to a thickness is 4.8 to 6.4 mm, which reads on Applicant's range of 3 to 35 mm (see col. 4, lines 20-34).

With respect to Claim 3 and 7, Schenkl teaches that as the insole's plaster impression is done of the person for whom the orthotic is being made, the insole made from a special cast for each individual (see col. 4, lines 51-65). As the shape of the foot is transferred to the shape of the plaster impression and then the insole, the insole is necessarily fits the individual's foot structure.

With respect to Claims 4 and 8, Schenkl teaches that the product is made for an individual user, is custom fit, and is available in many sizes, which would necessarily mean that the insoles would be as varied in size and be used in the shoes varying in size as much as the fitted individual's feet varied in size (see col. 4, lines 20-34).

Claims 1-8 lack an inventive step under PCT Article 33(3) as being obvious over Schenkl (PS Patent No. 4,702,255) for the reasons previously described.

Claims 1-8 have industrial applicability as defined by PCT Article 33(4). They have readily apparent industrial applicability.

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Box No. VII Certain defects in the international application

The following defects in the form or contents of the international application have been noted:

Claim 1 objected to under PCT Rule 66.2(a)(iii) as containing the following defect(s) in the form or contents thereof: Line three of the claim should state "creating a cast of the foot in plaster" to correct grammatical errors. Line 6 and 7 should state "foot in the area of the five" to correct the grammatical and typographical errors. Line nine of the claim should state "includes" to correct the grammatical error.

Claim 3 objected to under PCT Rule 66.2(a)(iii) as containing the following defect(s) in the form or contents thereof: Line one of the claim should state "fit the personal" to correct a grammatical error.

Claim 4 objected to under PCT Rule 66.2(a)(iii) as containing the following defect(s) in the form or contents thereof: Line two of the claim should state "insert sizes available" to correct a grammatical error.

Claim 8 objected to under PCT Rule 66.2(a)(iii) as containing the following defect(s) in the form or contents thereof: Line two of the claim should state "each shoe size" to correct a spelling error.

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Box No. VIII Certain observations on the international application

The following observations on the clarity of the claims, description, and drawings or on the questions whether the claims are fully supported by the description, are made:

Claim 2 are objected to under PCT Rule 66.2(a)(v) as lacking clarity under PCT Article 6 because claim 2 indefinite for the following reason(s): The size specified is not specified in terms of the dimensional size is being measured (width/length/thickness). For purposes of examination, the examiner interprets the size to mean thickness.

Claims 7 and 8 are objected to under PCT Rule 66.2(a)(v) as lacking clarity under PCT Article 6 because claims 7 and 8 indefinite for the following reason(s): The claims appear to be directed to the method of creating an insole yet claim literally "the system". For purposes of examination, the examiner interprets the claims as being directed to a method.